

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred House Bill No. 1510, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
- 3 "SECTION 1. IC 4-30-9-5 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. A contract executed
5 by the commission under this chapter must specify the reasons for a
6 suspension or termination of the contract by the commission, including
7 the following:
- 8 (1) Commission of a violation **of this article, IC 35-45-5-3,**
9 **IC 35-45-5-4, or a rule adopted under this article.**
- 10 (2) Failure to accurately account for lottery tickets, revenues, or
11 prizes as required by the commission.
- 12 (3) Commission of a fraud, deceit, or misrepresentation.
- 13 (4) Insufficient sale of tickets.
- 14 (5) Conduct prejudicial to public confidence in the lottery.
- 15 (6) A material change in a matter considered by the commission
16 executing the contract with the retailer.
- 17 SECTION 2. IC 4-30-17-3.5 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.5. (a) Before the
19 twenty-fifth day of ~~the~~ **each** month, the auditor of state shall ~~transfer~~

- 1 **make the following transfers** from the build Indiana fund: ~~to:~~
- 2 (1) To the state general fund motor vehicle excise tax replacement
- 3 account, nineteen million six hundred eighty-four thousand three
- 4 hundred seventy dollars (\$19,684,370). ~~per month;~~
- 5 (2) **To the enforcement and administration fund established**
- 6 **under IC 7.1-4-10, one hundred sixty-six thousand six**
- 7 **hundred sixty-six dollars (\$166,666).**
- 8 (3) **To the state gambling enforcement fund established under**
- 9 **IC 4-33.5-4, forty-one thousand six hundred sixty-six dollars**
- 10 **(\$41,666).**

11 (b) This subsection applies only if insufficient money is available in

12 the build Indiana fund to make the distributions to the state general

13 fund motor vehicle excise tax replacement account that are required

14 under subsection (a). Before the twenty-fifth day of each month, the

15 auditor of state shall transfer from the state general fund to the state

16 general fund motor vehicle excise tax replacement account the

17 difference between:

- 18 (1) the amount that subsection (a) requires the auditor of state to
- 19 distribute from the build Indiana fund to the state general fund
- 20 motor vehicle excise tax replacement account; and
- 21 (2) the amount that is available for distribution from the build
- 22 Indiana fund to the state general fund motor vehicle excise tax
- 23 replacement account.

24 The transfers required under this subsection are annually appropriated

25 from the state general fund."

26 Page 2, line 26, delete "." and insert **"in a capacity that is**

27 **primarily unrelated to the qualified organization's charity gaming**

28 **operations."**

29 Page 2, between lines 26 and 27, begin a new paragraph and insert:

30 "SECTION 7. IC 4-32.2-2-18.7 IS ADDED TO THE INDIANA

31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS

32 [EFFECTIVE JULY 1, 2007]: **Sec. 18.7. "Key person" means any:**

- 33 (1) **officer;**
- 34 (2) **director;**
- 35 (3) **executive;**
- 36 (4) **employee;**
- 37 (5) **trustee;**
- 38 (6) **substantial owner;**

1 **(7) independent owner; or**
 2 **(8) agent;**
 3 **of a business entity that has the power to exercise management or**
 4 **operating authority over the business entity or its affiliates."**

5 Page 3, between lines 30 and 31, begin a new paragraph and insert:
 6 "SECTION 11. IC 4-32.2-2-27.5 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2007]: **Sec. 27.5. "Substantial owner" means:**

9 **(1) a person holding at least a five percent (5%) ownership**
 10 **interest; or**
 11 **(2) an institutional investor holding at least a fifteen percent**
 12 **(15%) ownership interest;**
 13 **in a business entity."**

14 Page 3, between lines 36 and 37, begin a new paragraph and insert:
 15 "SECTION 13. IC 4-32.2-3-3, AS ADDED BY P.L.91-2006,
 16 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2007]: Sec. 3. (a) The commission shall adopt rules under
 18 IC 4-22-2 for the following purposes:

- 19 (1) Administering this article.
- 20 (2) Establishing the conditions under which charity gaming in
- 21 Indiana may be conducted.
- 22 (3) Providing for the prevention of practices detrimental to the
- 23 public interest and providing for the best interests of charity
- 24 gaming.
- 25 (4) Establishing rules concerning inspection of qualified
- 26 organizations and the review of the licenses necessary to conduct
- 27 charity gaming.
- 28 (5) Imposing penalties for noncriminal violations of this article.
- 29 **(6) Establishing standards for independent audits conducted**
- 30 **under IC 4-32.2-5-5.**

31 (b) The commission may adopt emergency rules under
 32 IC 4-22-2-37.1 if the commission determines that:

- 33 (1) the need for a rule is so immediate and substantial that
- 34 rulemaking procedures under IC 4-22-2-13 through IC 4-22-2-36
- 35 are inadequate to address the need; and
- 36 (2) an emergency rule is likely to address the need."

37 Page 4, line 21, delete ";" and insert **"and the violation would**
 38 **cause the commission to determine that the applicant, a key person,**

1 **or a substantial owner of the applicant is not of good moral**
 2 **character or reputation;"**.

3 Page 4, line 22, delete "harmful to the best interests" and insert
 4 **"that would negatively impact the integrity of charity gaming in**
 5 **Indiana."**.

6 Page 4, delete line 23.

7 Page 5, line 3, delete ";" and insert **"and the violation would cause**
 8 **the commission to determine that the applicant, a key person, or a**
 9 **substantial owner of the applicant is not of good moral character**
 10 **or reputation;"**.

11 Page 5, line 4, delete "harmful to the best interests" and insert **"that**
 12 **would negatively impact the integrity of charity gaming in**
 13 **Indiana."**.

14 Page 5, delete line 5.

15 Page 7, line 32, delete "The" and insert **"Subject to subsection (h),**
 16 **the"**.

17 Page 9, between lines 4 and 5, begin a new paragraph and insert:
 18 **"(h) Notwithstanding IC 4-32.2-2-24, this section applies only to:**
 19 **(1) a bona fide civic organization; or**
 20 **(2) a bona fide veterans organization;**
 21 **that has been continuously in existence in Indiana for ten (10)**
 22 **years. A qualified organization that is not described in this**
 23 **subsection may not apply for an annual charity game night license**
 24 **under this section."**.

25 Page 13, line 28, after "drawing" insert **"at the raffle event"**.

26 Page 14, between lines 17 and 18, begin a new paragraph and insert:
 27 **"SECTION 31. IC 4-32.2-5-5, AS ADDED BY P.L.91-2006,**
 28 **SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
 29 **JULY 1, 2007]: Sec. 5. (a) A qualified organization shall maintain**
 30 accurate records of all financial aspects of an allowable event under
 31 this article. A qualified organization shall make accurate reports of all
 32 financial aspects of an allowable event to the commission within the
 33 time established by the commission. The commission may prescribe
 34 forms for this purpose. The commission shall, by rule, require a
 35 qualified organization to deposit funds received from an allowable
 36 event in a separate and segregated account set up for that purpose. All
 37 expenses of the qualified organization with respect to an allowable
 38 event shall be paid from the separate account.

(b) The commission may require a qualified organization to submit any records maintained under this section for an independent audit by a certified public accountant selected by the commission. A qualified organization must bear the cost of any audit required under this section."

Page 14, line 27, strike "allowable" and insert "festival".

Page 16, delete lines 10 through 41, begin a new paragraph and insert:

"SECTION 36. IC 4-32.2-5-22, AS ADDED BY P.L.91-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 22. If an employee or officer of a manufacturer or distributor is a member of a bona fide civic or bona fide religious organization that holds a charity gaming license, the employee's or officer's membership in the organization may not be construed as an affiliation with the organization's charity gaming operations. An employee, officer, or owner of a manufacturer or distributor is prohibited from participating in or affiliating in any way with the charity gaming operations of a qualified organization of which the employee, officer, or owner is a member.

SECTION 37. IC 4-32.2-8-1, AS ADDED BY P.L.91-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) The commission may suspend or revoke the license of or levy a civil penalty against a qualified organization, a manufacturer, a distributor, or an individual under this article for any of the following:

(1) Violation of:

(A) a provision of this article, or of IC 35-45-5-3, IC 35-45-5-4, or a rule of the commission; or

(B) any other local ordinance, state or federal statute, or administrative rule or regulation that would cause the commission to determine that the person is not of good moral character or reputation.

(2) Failure to accurately account for

(A) bingo cards;

(B) bingo boards;

(C) bingo sheets;

(D) bingo pads;

(E) pull tabs;

1 ~~(F) punchboards; or~~

2 ~~(G) tip boards.~~

3 **a licensed supply.**

4 (3) Failure to accurately account for sales proceeds from an event
5 or activity licensed or permitted under this article.

6 (4) Commission of a fraud, deceit, or misrepresentation.

7 (5) Conduct prejudicial to public confidence in the commission.

8 (b) If a violation is of a continuing nature, the commission may
9 impose a civil penalty upon a licensee or an individual for each day the
10 violation continues.

11 **(c) For purposes of subsection (a), a finding that a person has**
12 **violated IC 35-45-5-3 or IC 35-45-5-4 must be supported by a**
13 **preponderance of the evidence."**

14 Page 18, between lines 41 and 42, begin a new paragraph and insert:

15 "SECTION 42. IC 4-33-4-1.5 IS ADDED TO THE INDIANA
16 CODE AS A NEW SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. The commission shall appoint**
18 **the special prosecuting attorney for gambling enforcement and**
19 **oversee the office of the special prosecuting attorney for gambling**
20 **enforcement established under IC 4-33.5-2-1.**

21 SECTION 43. IC 4-33.5 IS ADDED TO THE INDIANA CODE AS
22 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
23 2007]: **ARTICLE 33.5. SPECIAL PROSECUTING ATTORNEY**
24 **FOR GAMBLING ENFORCEMENT**

25 **Chapter 1. Definitions**

26 **Sec. 1. The definitions in this chapter apply throughout this**
27 **article.**

28 **Sec. 2. "Commission" refers to the Indiana gaming commission**
29 **established under IC 4-33-3.**

30 **Sec. 3. "Office" refers to the office of the special prosecuting**
31 **attorney for gambling enforcement established by IC 4-33.5-2-1.**

32 **Sec. 4. "Special prosecuting attorney" refers to the special**
33 **prosecuting attorney for gambling enforcement described in**
34 **IC 4-33.5-2. The term does not include a special prosecutor**
35 **appointed under IC 33-39-1-6 or IC 4-2-7-7.**

36 **Chapter 2. Office of the Special Prosecuting Attorney for**
37 **Gambling Enforcement**

38 **Sec. 1. There is established the office of the special prosecuting**

1 attorney for gambling enforcement. The office of the special
2 prosecuting attorney for gambling enforcement consists of the
3 special prosecuting attorney, who is the director of the office, and
4 an additional staff of deputy special prosecuting attorneys,
5 investigators, auditors, and clerical employees appointed by the
6 special prosecuting attorney as necessary to carry out the duties of
7 the special prosecuting attorney.

8 **Sec. 2. The special prosecuting attorney shall do the following:**

9 (1) Prosecute crimes under IC 35-45-5 and initiate, supervise,
10 and coordinate investigations relating to a violation under
11 IC 35-45-5.

12 (2) Recommend policies and carry out other activities
13 designed to deter, detect, and eradicate illegal gambling.

14 (3) Adopt rules under IC 4-22-2 to implement this chapter.

15 (4) Recommend legislation to the commission and general
16 assembly to strengthen laws relating to gambling.

17 (5) Annually submit a report to the legislative council
18 detailing the special prosecuting attorney's activities. The
19 report must be in an electronic format under IC 5-14-6.

20 (6) Prepare interpretive and educational materials and
21 programs.

22 **Sec. 3. (a) Except as provided in subsections (b) and (c), the**
23 **special prosecuting attorney has concurrent jurisdiction with the**
24 **prosecuting attorney of a county in the investigation and**
25 **prosecution of a crime under IC 35-45-5.**

26 **(b) If the special prosecuting attorney discovers evidence of the**
27 **commission of a crime under IC 35-45-5, the special prosecuting**
28 **attorney may certify to the prosecuting attorney of the county in**
29 **which the crime appears to have been committed the following**
30 **information:**

31 (1) The identity of any person who may be involved in the
32 criminal activity.

33 (2) The specific criminal statute that the special prosecuting
34 attorney believes has been violated.

35 **In addition, the special prosecuting attorney shall share with the**
36 **county prosecuting attorney any relevant evidence. If the county**
37 **prosecuting attorney decides to prosecute the crime described in**
38 **the information certified to the county prosecuting attorney, or any**

1 other related crimes, the special prosecuting attorney shall
 2 cooperate with the county prosecuting attorney in the investigation
 3 and prosecution of the case.

4 (c) If:

5 (1) the county prosecuting attorney to whom the special
 6 prosecuting attorney issues a certification under subsection

7 (b):

8 (A) is disqualified from investigating or bringing a
 9 criminal prosecution in the matter addressed in the
 10 certification;

11 (B) does not file an information or seek an indictment not
 12 later than ninety (90) days after the date on which the
 13 special prosecuting attorney certified the information to
 14 the county prosecuting attorney; or

15 (C) refers the case back to the special prosecuting
 16 attorney; and

17 (2) the special prosecuting attorney finds that there is
 18 probable cause to believe that a person identified in the
 19 certification under subsection (b)(1) has violated a criminal
 20 statute identified in the certification under subsection (b)(2);
 21 the special prosecuting attorney may prosecute the case.

22 Sec. 4. To carry out the duties described in sections 2 and 3 of
 23 this chapter, the special prosecuting attorney has the following
 24 powers:

25 (1) As part of an investigation or prosecution, the special
 26 prosecuting attorney may:

27 (A) administer oaths;

28 (B) examine witnesses under oath;

29 (C) issue subpoenas and subpoenas duces tecum; and

30 (D) examine the records, reports, audits, reviews, papers,
 31 books, recommendations, contracts, correspondence, or
 32 any other documents maintained by any person.

33 (2) The special prosecuting attorney may apply to a circuit or
 34 superior court for an order holding an individual in contempt
 35 of court if the individual refuses to give sworn testimony
 36 under a subpoena issued by the special prosecuting attorney
 37 or otherwise disobeys a subpoena or subpoena duces tecum
 38 issued by the special prosecuting attorney.

(3) In matters within the authority of the special prosecuting attorney under this chapter, the special prosecuting attorney has the same powers as the prosecuting attorney of a county. However, the special prosecuting attorney may exercise these powers only in the investigation and prosecution of an act that is a crime under IC 35-45-5.

Chapter 3. Appointment and Eligibility

Sec. 1. The commission shall appoint the special prosecuting attorney. The special prosecuting attorney serves at the pleasure of the commission.

Sec. 2. The special prosecuting attorney and any deputy special prosecuting attorneys must be attorneys licensed to practice law in Indiana.

Sec. 3. The special prosecuting attorney is entitled to receive compensation set by the commission and approved by the budget agency. However, the special prosecuting attorney's compensation may not exceed the minimum compensation paid to a full-time prosecuting attorney under IC 33-39-6.

Sec. 4. Subject to the approval of the budget agency, the special prosecuting attorney shall fix the salary of all other employees of the office of the special prosecuting attorney.

Chapter 4. State Gambling Enforcement Fund

Sec. 1. The state gambling enforcement fund is established.

Sec. 2. The fund consists of:

- (1) money transferred to the fund under IC 4-30-17-3.5; and**
- (2) appropriations from the general assembly.**

Sec. 3. The commission shall administer the fund.

Sec. 4. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

Sec. 5. Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 6. Money in the fund must be used by the commission to pay the operating expenses of the office.

SECTION 44. IC 6-2.5-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) The department may, for good cause, revoke a certificate issued under section 1, 3, or

1 4 of this chapter. However, the department must give the certificate
2 holder at least five (5) days notice before it revokes the certificate
3 under this subsection.

4 (b) The department shall revoke a certificate issued under section
5 1, 3, or 4 of this chapter if, for a period of three (3) years, the certificate
6 holder fails to:

- 7 (1) file the returns required by IC 6-2.5-6-1; or
8 (2) report the collection of any state gross retail or use tax on the
9 returns filed under IC 6-2.5-6-1.

10 However, the department must give the certificate holder at least five
11 (5) days notice before it revokes the certificate.

12 (c) The department may, for good cause, revoke a certificate issued
13 under section 1 of this chapter after at least five (5) days notice to the
14 certificate holder if:

15 (1) the certificate holder is subject to an innkeeper's tax under
16 IC 6-9; and

17 (2) a board, bureau, or commission established under IC 6-9 files
18 a written statement with the department.

19 (d) The statement filed under subsection (c) must state that:

20 (1) information obtained by the board, bureau, or commission
21 under IC 6-8.1-7-1 indicates that the certificate holder has not
22 complied with IC 6-9; and

23 (2) the board, bureau, or commission has determined that
24 significant harm will result to the county from the certificate
25 holder's failure to comply with IC 6-9.

26 (e) The department shall revoke or suspend a certificate issued
27 under section 1 of this chapter after at least five (5) days notice to the
28 certificate holder if:

29 (1) the certificate holder owes taxes, penalties, fines, interest, or
30 costs due under IC 6-1.1 that remain unpaid at least sixty (60)
31 days after the due date under IC 6-1.1; and

32 (2) the treasurer of the county to which the taxes are due requests
33 the department to revoke or suspend the certificate.

34 (f) The department shall reinstate a certificate suspended under
35 subsection (e) if the taxes and any penalties due under IC 6-1.1 are paid
36 or the county treasurer requests the department to reinstate the
37 certificate because an agreement for the payment of taxes and any
38 penalties due under IC 6-1.1 has been reached to the satisfaction of the

1 county treasurer.

2 **(g) The department shall revoke a certificate issued under**
 3 **section 1 of this chapter after at least five (5) days notice to the**
 4 **certificate holder if the department finds in a public hearing by a**
 5 **preponderance of the evidence that the certificate holder has**
 6 **violated IC 35-45-5-3 or IC 35-45-5-4.**

7 SECTION 45. IC 7.1-3-18.5-5 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) Subject to
 9 subsection (b), the commission may suspend the certificate of a person
 10 who fails to pay a civil penalty imposed for violating IC 35-46-1-10,
 11 IC 35-46-1-10.2, IC 35-46-1-11.5, or IC 35-46-1-11.7.

12 (b) Before enforcing the imposition of a civil penalty or suspending
 13 **or revoking** a certificate under this chapter, the commission shall
 14 provide written notice of the alleged violation to the certificate holder
 15 and conduct a hearing. The commission shall provide written notice of
 16 the civil penalty or suspension to the certificate holder.

17 **(c) Subject to subsection (b), the commission may revoke the**
 18 **certificate of a person if the commission finds by a preponderance**
 19 **of the evidence that the person has violated IC 35-45-5-3 or**
 20 **IC 35-45-5-4.**

21 SECTION 46. IC 7.1-3-23-2 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. ~~Fine, Suspension,~~
 23 ~~and Revocation. General.~~ The commission may fine, suspend, or
 24 revoke the permit, or fine and suspend or revoke, the permit of a
 25 permittee for the violation of a provision of this title, ~~or~~ of a rule or
 26 regulation of the commission, **or of IC 35-45-5-3 or IC 35-45-5-4.** The
 27 commission may fine a permittee for each day the violation continues
 28 if the violation is of a continuing nature. **A finding that a permittee**
 29 **has violated IC 35-45-5-3 or IC 35-45-5-4 must be supported by a**
 30 **preponderance of the evidence.**

31 SECTION 45. IC 7.1-3-23-5 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. ~~Revocation of~~
 33 ~~Permits. General.~~ The commission shall revoke a permit of any type
 34 only on account of the violation of, or refusal to comply with, a
 35 provision of this title or of a rule or regulation of the commission, **or**
 36 **on account of a violation of IC 35-45-5-3 or IC 35-45-5-4. A finding**
 37 **that a permittee has violated IC 35-45-5-3 or IC 35-45-5-4 must be**
 38 **supported by a preponderance of the evidence.**

SECTION 48. IC 33-39-1-6, AS AMENDED BY P.L.222-2005,
SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2007]: Sec. 6. **(a) This section does not apply to the special
prosecuting attorney for gambling enforcement appointed to the
office established by IC 4-33.5-2-1.**

~~(a)~~ **(b)** Special prosecutors may be appointed under this section or
in accordance with IC 4-2-7-7.

~~(b)~~ **(c)** A circuit or superior court judge:

(1) shall appoint a special prosecutor if:

(A) any person other than the prosecuting attorney or the
prosecuting attorney's deputy files a verified petition
requesting the appointment of a special prosecutor; and

(B) the prosecuting attorney agrees that a special prosecutor is
needed;

(2) may appoint a special prosecutor if:

(A) a person files a verified petition requesting the
appointment of a special prosecutor; and

(B) the court, after:

(i) notice is given to the prosecuting attorney; and

(ii) an evidentiary hearing is conducted at which the
prosecuting attorney is given an opportunity to be heard;
finds by clear and convincing evidence that the appointment
is necessary to avoid an actual conflict of interest or there is
probable cause to believe that the prosecutor has committed a
crime;

(3) may appoint a special prosecutor if:

(A) the prosecuting attorney files a petition requesting the
court to appoint a special prosecutor; and

(B) the court finds that the appointment is necessary to avoid
the appearance of impropriety; and

(4) may appoint a special prosecutor if:

(A) an elected public official, who is a defendant in a criminal
proceeding, files a verified petition requesting a special
prosecutor within ten (10) days after the date of the initial
hearing; and

(B) the court finds that the appointment of a special prosecutor
is in the best interests of justice.

~~(c)~~ **(d)** Each person appointed to serve as a special prosecutor:

1 (1) must consent to the appointment; and

2 (2) must be:

3 (A) the prosecuting attorney or a deputy prosecuting attorney
4 in a county other than the county in which the person is to
5 serve as special prosecutor; or

6 (B) except as provided in subsection ~~(d)~~, **(e)**, a senior
7 prosecuting attorney.

8 ~~(d)~~ **(e)** A senior prosecuting attorney may be appointed in the county
9 in which the senior prosecuting attorney previously served if the court
10 finds that an appointment under this subsection would not create the
11 appearance of impropriety.

12 ~~(e)~~ **(f)** A person appointed to serve as a special prosecutor has the
13 same powers as the prosecuting attorney of the county. However, the
14 appointing judge shall limit scope of the special prosecutor's duties to
15 include only the investigation or prosecution of a particular case or
16 particular grand jury investigation.

17 ~~(f)~~ **(g)** The court shall establish the length of the special prosecutor's
18 term. If the target of an investigation by the special prosecutor is a
19 public servant (as defined in IC 35-41-1-24), the court shall order the
20 special prosecutor to file a report of the investigation with the court at
21 the conclusion of the investigation. The report is a public record.

22 ~~(g)~~ **(h)** If the special prosecutor is not regularly employed as a
23 full-time prosecuting attorney or full-time deputy prosecuting attorney,
24 the compensation for the special prosecutor's services:

25 (1) shall be paid to the special prosecutor from the unappropriated
26 funds of the appointing county; and

27 (2) may not exceed:

28 (A) a per diem equal to the regular salary of a full-time
29 prosecuting attorney of the appointing circuit; and

30 (B) travel expenses and reasonable accommodation expenses
31 actually incurred.

32 ~~(h)~~ **(i)** If the special prosecutor is regularly employed as a full-time
33 prosecuting attorney or deputy prosecuting attorney, the compensation
34 for the special prosecutor's services:

35 (1) shall be paid out of the appointing county's unappropriated
36 funds to the treasurer of the county in which the special
37 prosecutor regularly serves; and

38 (2) must include a per diem equal to the regular salary of a

1 full-time prosecuting attorney of the appointing circuit, travel
 2 expenses, and reasonable accommodation expenses actually
 3 incurred.

4 (j) The combination of:

5 (1) the compensation paid to a senior prosecuting attorney under
 6 this chapter; and

7 (2) retirement benefits that the person appointed as a senior
 8 prosecuting attorney is receiving or entitled to receive;

9 may not exceed the minimum compensation to which a full-time
 10 prosecuting attorney is entitled under IC 33-39-6-5.

11 (k) A senior prosecuting attorney appointed under this chapter
 12 may not be compensated as senior prosecuting attorney for more than
 13 one hundred (100) calendar days in total during a calendar year.

14 SECTION 49. IC 35-45-5-1, AS AMENDED BY P.L.70-2005,
 15 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2007]: Sec. 1. (a) ~~As used in~~ **The definitions in this section**
 17 **apply throughout** this chapter.

18 (b) **"Electronic gaming device" means any electromechanical**
 19 **device, electrical device, or machine that satisfies the following**
 20 **requirements:**

21 (1) **The device is available to play or operate upon payment of**
 22 **consideration.**

23 (2) **The device:**

24 (A) **by reason of the skill of the operator;**

25 (B) **by application of the element of chance; or**

26 (C) **due to both (A) and (B);**

27 **may deliver or entitle the person playing or operating the**
 28 **device to receive premiums, merchandise, tokens, redeemable**
 29 **game credits, or anything of value other than unredeemable**
 30 **free games regardless of whether the payoff is made**
 31 **automatically from the device or in any other manner.**

32 (c) **"Gain"** means the direct realization of winnings.

33 (d) **"Gambling"** means risking money or other property for gain,
 34 contingent in whole or in part upon lot, chance, or the operation of a
 35 gambling device; but it does not include participating in:

36 (1) **bona fide contests of skill, speed, strength, or endurance in**
 37 **which awards are made only to entrants or the owners of entries;**

38 **or**

1 (2) bona fide business transactions that are valid under the law of
2 contracts.

3 **(e) "Gambling device" means:**

4 (1) a mechanism by the operation of which a right to money or
5 other property may be credited, in return for consideration, as the
6 result of the operation of an element of chance;

7 (2) a mechanism that, when operated for a consideration, does not
8 return the same value or property for the same consideration upon
9 each operation;

10 (3) a mechanism, furniture, fixture, construction, or installation
11 designed primarily for use in connection with professional
12 gambling;

13 (4) a policy ticket or wheel; or

14 (5) a subassembly or essential part designed or intended for use
15 in connection with such a device, mechanism, furniture, fixture,
16 construction, or installation.

17 In the application of this definition, an immediate and unrecorded right
18 to replay mechanically conferred on players of pinball machines and
19 similar amusement devices is presumed to be without value.

20 **(f) "Gambling information" means:**

21 (1) a communication with respect to a wager made in the course
22 of professional gambling; or

23 (2) information intended to be used for professional gambling.

24 **(g) "Interactive computer service" means** an Internet service, an
25 information service, a system, or an access software provider that
26 provides or enables computer access to a computer served by multiple
27 users. The term includes the following:

28 (1) A service or system that provides access or is an intermediary
29 to the Internet.

30 (2) A system operated or services offered by a library, school,
31 state educational institution (as defined in IC 20-12-0.5-1), or
32 private college or university.

33 **(h) "Operator" means** a person who owns, maintains, or operates an
34 Internet site that is used for interactive gambling.

35 **(i) "Profit" means** a realized or unrealized benefit (other than a gain)
36 and includes benefits from proprietorship or management and unequal
37 advantage in a series of transactions.

38 **(j) For purposes of this chapter:**

1 **(1) a card game; or**
 2 **(2) an electronic version of a card game;**
 3 **is a game of chance and may not be considered a bona fide contest**
 4 **of skill.**

5 SECTION 50. IC 35-45-5-3, AS AMENDED BY P.L.70-2005,
 6 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2007]: Sec. 3. (a) A person who knowingly or intentionally:

- 8 (1) engages in pool-selling;
- 9 (2) engages in bookmaking;
- 10 (3) maintains, in a place accessible to the public:
 - 11 **(A) slot machines;**
 - 12 **(B) one-ball machines or variants thereof;**
 - 13 **(C) an electronic gaming device;**
 - 14 **(D) pinball machines that award anything other than an**
 - 15 **immediate and unrecorded right of replay;**
 - 16 **(E) roulette wheels;**
 - 17 **(F) dice tables; or**
 - 18 **(G) money or merchandise pushcards, punchboards, jars, or**
 - 19 **spindles;**
 - 20 (4) conducts lotteries or policy or numbers games or sells chances
 - 21 therein;
 - 22 (5) conducts any banking or percentage games played with cards,
 - 23 dice, or counters, or accepts any fixed share of the stakes therein;
 - 24 or
 - 25 (6) accepts, or offers to accept, for profit, money, or other
 - 26 property risked in gambling;

27 commits professional gambling, a Class D felony. **However, the**
 28 **offense is a Class C felony if the person has a prior unrelated**
 29 **conviction under this subsection.**

30 (b) An operator who knowingly or intentionally uses the Internet to:

- 31 (1) engage in pool-selling:
 - 32 (A) in Indiana; or
 - 33 (B) in a transaction directly involving a person located in
 - 34 Indiana;
- 35 (2) engage in bookmaking:
 - 36 (A) in Indiana; or
 - 37 (B) in a transaction directly involving a person located in
 - 38 Indiana;

(3) maintain, on an Internet site accessible to residents of Indiana, the equivalent of:

(A) slot machines;

(B) one-ball machines or variants of one-ball machines;

(C) pinball machines that award anything other than an immediate and unrecorded right of replay;

(D) roulette wheels;

(E) dice tables; or

(F) money or merchandise pushcards, punchboards, jars, or spindles;

(4) conduct lotteries or policy or numbers games or sell chances in lotteries or policy or numbers games:

(A) in Indiana; or

(B) in a transaction directly involving a person located in Indiana;

(5) conduct any banking or percentage games played with the computer equivalent of cards, dice, or counters, or accept any fixed share of the stakes in those games:

(A) in Indiana; or

(B) in a transaction directly involving a person located in Indiana; or

(6) accept, or offer to accept, for profit, money or other property risked in gambling:

(A) in Indiana; or

(B) in a transaction directly involving a person located in Indiana;

commits professional gambling over the Internet, a Class D felony.

SECTION 51. IC 35-45-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) Except as provided in subsection (b), a person who:

(1) knowingly or intentionally owns, manufactures, possesses, buys, sells, rents, leases, repairs, or transports a gambling device, or offers or solicits an interest in a gambling device;

(2) before a race, game, contest, or event on which gambling may be conducted, knowingly or intentionally transmits or receives gambling information by any means, or knowingly or intentionally installs or maintains equipment for the transmission or receipt of gambling information; or

1 (3) having control over the use of a place, knowingly or
 2 intentionally permits another person to use the place for
 3 professional gambling;

4 commits promoting professional gambling, a Class D felony. **However,**
 5 **the offense is a Class C felony if the person has a prior unrelated**
 6 **conviction under this section.**

7 (b) Subsection (a)(1) does not apply to a boat manufacturer who:

8 (1) transports or possesses a gambling device solely for the
 9 purpose of installing that device in a boat that is to be sold and
 10 transported to a buyer; and

11 (2) does not display the gambling device to the general public or
 12 make the device available for use in Indiana.

13 (c) When a public utility is notified by a law enforcement agency
 14 acting within its jurisdiction that any service, facility, or equipment
 15 furnished by it is being used or will be used to violate this section, it
 16 shall discontinue or refuse to furnish that service, facility, or
 17 equipment, and no damages, penalty, or forfeiture, civil or criminal,
 18 may be found against a public utility for an act done in compliance
 19 with such a notice. This subsection does not prejudice the right of a
 20 person affected by it to secure an appropriate determination, as
 21 otherwise provided by law, that the service, facility, or equipment
 22 should not be discontinued or refused, or should be restored."

23 Page 19, after line 1, begin a new paragraph and insert:

24 "SECTION 52. [EFFECTIVE UPON PASSAGE] **(a) The**
 25 **amendment of IC 35-45-5-1 by this act is not intended to result in**
 26 **any substantive change in the law.**

27 **(b) This act does not affect any:**

28 **(1) violations committed; or**

29 **(2) proceedings begun;**

30 **before the effective date of this act. Those offenses and proceedings**
 31 **continue and shall be imposed and enforced under prior law as if**
 32 **this act had not been enacted.**

33 SECTION 53. [EFFECTIVE JULY 1, 2007] **IC 35-45-5-3 and**
 34 **IC 35-45-5-4, both as amended by this act, apply only to crimes**

- 1 **committed after June 30, 2007.**
- 2 SECTION 54. **An emergency is declared for this act."**
- 3 Renumber all SECTIONS consecutively.
 (Reference is to HB 1510 as reprinted February 20, 2007.)

and when so amended that said bill do pass.

Committee Vote: Yeas 12, Nays 0.

Long

Chairperson